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Blink And You'll Miss Your Window To Intervene In Patent Infringement Suit

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Judge Indira Talwani emphasized the importance of timely intervention in any patent infringement suit, in a recent opinion out of the District of *Massachusetts*. In this case, an exclusive licensee of several patents was not permitted to intervene in a patent infringement suit, largely because its motion was filed many months too late.

The Hilsinger Company, an eyewear company, filed a declaratory judgment action alleging invalidity and noninfringement of several patents held by Eyeego, another company in the industry. OptiSource International was Eyeego's exclusive licensee of the patents-in-suit. Notably, the existence of potential litigation against Hilsinger Company was disclosed in the license agreement between OptiSource and Eyeego. And as the case progressed, OptiSource received regular monthly updates on the progress of the case.

With these facts in mind, Judge Talwani found that OptiSource's motion to intervene – which was filed in July 2015, over two years after the case was initiated, and after fact discovery had closed – was simply too late. OptiSource had known about the potential litigation for years, and was well-informed about the progress of the case. In Judge Talwani's view, permitting OptiSource to intervene and interpose damages claims at that late stage would have required reopening discovery, prejudicing Hilsinger by forcing it to conduct additional discovery into OptiSource's potential lost profits claims.

This case has important implications for exclusive patent licensees. As Judge Talwani's opinion makes clear, timely intervention is necessary in any cases involving their licensed patents.

The case is ***The Hilsinger Company v. Eyeego, LLC*,** No. 13-cv-10594-IT, in the District of Massachusetts. A copy of the opinion may be found here.

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